IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

v. CRIMINAL CAUSE NO. 3:14cr111HTW-FKB

CECIL MCCRORY

UNOPPOSED MOTION TO RECONSIDER FINE IMPOSED AS PART OF SENTENCE

COMES NOW, the Defendant, Mr. Cecil McCrory, by and through his undersigned counsel of record, and files this, his Motion to Reconsider the Fine Imposed as Part of Defendant's Sentence in the above-styled and -numbered cause. During Mr. McCrory's February 6, 2017 sentencing hearing, this Court orally pronounced that as part of Mr. McCrory's sentence he was to pay within 180 days of the entry of judgment a fine in the amount of $150,000.00. After the Court made that pronouncement and at the very end of the hearing, the undersigned announced to the Court that Mr. McCrory was then prepared to satisfy the two remaining portions of his forfeiture requirements to the Government as part of his plea agreement and sentence. Mr. McCrory satisfied the first of those two remaining obligations by turning over to the Government during the hearing a contract for sale of his interest in real property that he secured so that the Government could take possession of certain assets to which it was entitled based on Mr. McCrory's sale of a Gulf Coast condominium. Next, Mr. McCrory attempted to relinquish to the Government a check in the amount of $1.1 Million to complete the last of his forfeiture obligations. At that point, the Court gave the parties permission to confer after the hearing to determine whether in light of Mr. McCrory's near satisfaction of his forfeiture obligations he had the financial ability to comply with the Court-ordered fine within the time period the Court had specified. Counsel for the Government and counsel for Mr. McCrory have since discussed the matter at length. In short, Mr. McCrory represents to the Court that he does not have sufficient assets to pay the fine the Court entered in this case. As such, the parties were not able to formulate an installment plan through which Mr. McCrory could pay the aforementioned fine.

During Mr. McCrory's sentencing hearing, the Government and the defense did not object to Paragraph 124 of the Pre-sentence Investigation Report ("PSIR") in which the U.S. Probation Office relayed to the Court the balance sheet information that Mr. McCrory had previously provided to the Court. As of the date of the issuance of the PSIR, that balance sheet was a fair representation of Mr. McCrory's assets and liabilities. In addition, under the terms of the defendant's plea agreement and agreed preliminary order of forfeiture, the defendant was not to liquidate or otherwise dispose of any of his assets except to satisfy his forfeiture requirements. The undersigned, however, did not prior to the Court's pronouncement of the sentence notify the Court of the changes to Mr. McCrory's asset and liability profile that occurred (1) because of his sale of his interest in the condominium and satisfaction of the encumbrances on that condominium so that the sale could be completed and (2) because of Mr. McCrory's liquidation of assets which allowed him to provide the Government the nearly $1.1 Million that was due at his sentencing. That oversight on the part of the defense resulted in the Court having to look only to Paragraph 124 of the PSIR to determine the fine portion of Mr. McCrory's sentence. Since the date of Mr. McCrory's sentencing hearing, the defense has obtained from financial institutions documents and other records that would demonstrate to the Court that Mr. McCrory, after the above-described liquidation, does not have sufficient assets to pay the $150,000.00 fine the Court ordered him to pay. Those records include evidence that Mr. McCrory did not have sufficient funds to cover the $1.1 Million dollar check that he tendered to the Government at the sentencing hearing and that he had to replace that $1.1 Million check with a check slightly less in value just to tender to the Government all the liquid funds he could pay in satisfaction of his monetary forfeiture obligation.

Based on the foregoing, Mr. McCrory respectfully requests this Court reconsider the fine amount that it imposed on Mr. McCrory as part of his sentence. The PSIR states that Mr. McCrory does not have the cash flow to support the fine the court pronounced. PSIR at ¶ 126. Mr. McCrory now seeks to show the Court that he does not have sufficient assets on hand to pay that fine because of the liquidation associated with is forfeiture requirements. The undersigned has discussed the premises of this motion with the Honorable Assistant United States Attorney Darren J. LaMarca, Esq., counsel for the Government in this case. AUSA LaMarca states that the Government does not oppose Mr. McCrory's request for the Court to reconsider the fine at issue. AUSA LaMarca states, however, that the Government takes no position on the fine amount that would be appropriate under the circumstances.

RESPECTFULLY SUBMITTED, on this, the 9th day of March, 2017.

/s/ E. Carlos Tanner, III
E. Carlos Tanner, III, Esq. (MS Bar No. 102713)
TANNER & ASSOCIATES, LLC
P.O. Box 3709
Jackson, Mississippi 39207
carlos.tanner@thetannerlawfirm.com
601.460.1745 (telephone)
662.796.3509 (facsimile)

CERTIFICATE OF CONFERENCE

I, E. Carlos Tanner, III, do hereby certify that I have conferred in good faith with Assistant United States Attorney Darren J. LaMarca, Esq. about the premises of this motion. AUSA LaMarca has informed the undersigned counsel for Mr. Cecil McCrory that AUSA LaMarca's client, the United States of America, does not oppose the defendant's request for the Court to reconsider the fine at issue. AUSA LaMarca states, however, that the Government takes no position on the fine amount that would be appropriate under the circumstances.

ON THIS, the 9th day of March, 2017.

*/s/ E. Carlos Tanner, III*_________

E. Carlos Tanner, III, Esq. (MS Bar No. 102713)
TANNER & ASSOCIATES, LLC
P.O. Box 3709
Jackson, Mississippi 39207
carlos.tanner@thetannerlawfirm.com
601.460.1745 (telephone)
662.796.3509 (facsimile)

CERTIFICATE OF SERVICE

I, E. Carlos Tanner, III, do hereby certify that on this date, March 9th, 2017, I have electronically filed the foregoing Motion to Reconsider Fine Imposed as Part of Sentence with the Clerk of Court for the United States District Court for the Southern District of Mississippi using the ECF system, which caused notification of that filing to be sent electronically to all counsel of record in this cause.

ON THIS, the 9th day of March, 2017.

/s/ E. Carlos Tanner, III
E. Carlos Tanner, III, Esq. (MS Bar No. 102713)
TANNER & ASSOCIATES, LLC
P.O. Box 3709
Jackson, Mississippi 39207
carlos.tanner@thetannerlawfirm.com
601.460.1745 (telephone)
662.796.3509 (facsimile)